IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4482 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO.LTD.

Versus

KANTABEN KANUBHAI PARMAR

Appearance:

MR PV NANAVATI for Appellant

MR MTM HAKIM for Respondents No. 1 to 6

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988, wherein the appellant Insurance Company challenges the order passed under section 163-A of the said Act by the Motor Accident Claims Tribunal, Nadiad, in Motor Accident Claim Petition No.2307/99. Appeal admitted. Mr. M.T.M. Hakim appears for respondent nos.1 to 6 (original claimants) and waives service of notice in the appeal.

2. On the request of learned counsel, the appeal is taken up for hearing today.

3. As a result of the hearing and discussion, both on facts and law applicable in this context, a consensus has been arrived at between the learned counsel on the basis of which the following directions are given.

4. The impugned judgement and award passed by the Tribunal under section 163-A is hereby quashed and set aside.

5. It is clarified that the respondent nos.1 to 6-original claimants shall be entitled to pursue the main claim petition filed under section 166 of the said Act and to obtain a judgement and award thereon in accordance with law.

6. It is stated before us that the appellant Insurance Company had deposited the amount due under the said award before the Tribunal, and that the Tribunal has passed orders in respect of this amount by permitting a withdrawal by the original claimants of 30% of the amount of the deposit, whereas 70% of the amount deposited has been directed to be invested in a fixed deposit with a nationalised bank. In this context it is clarified that the amount which has so been deposited in the fixed deposit shall continue to remain in the fixed deposit and shall not be disturbed during the pendency of the claim petition under section 166 of the said Act. The periodic interest that may accrue on this deposit may be withdrawn by respondent nos.1 to 6- original claimants.

7. However, the respondent nos.1 to 6- original claimants shall file an undertaking before the Tribunal within three weeks from today to the effect that the

claimants shall pursue the main claim petition under section 166 of the said Act, and obtain an adjudication thereon, on merits and in accordance with law, and that they shall not permit this application to be withdrawn or dismissed for default or be disposed of in any other manner, and that the amount which has already been disbursed in their favour shall be adjusted in the final award that may be passed under section 168 of the said Act. If such an undertaking is not filed, it shall be open to the appellant Insurance Company to apply to the Tribunal for withdrawal and/or refund of the amount which the appellant Insurance Company had deposited with the Tribunal.

8. This appeal is, therefore, allowed only to the aforesaid extent with no order as to costs. Decree accordingly.

9. It requires to be noted that on the facts and circumstances noted hereinabove and in view of the directions consequently issued, it would be appropriate for the Tribunal to expedite the hearing of the main claim petition under section 166 of the said Act, and to dispose of the same as early as possible in consonance with the date of its filing and the workload before the Tribunal.

10. Direct service is permitted.

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